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Markevich *v.* Canada, [2003] 1 S.C.R. 94, 2003 SCC 9

Her Majesty The Queen *Appellant*

v.

Joe Markevich *Respondent*

and

Teck Cominco Metals Ltd. *Intervener*

Indexed as: Markevich *v.* Canada

Neutral citation: 2003 SCC 9.

File No.: 28717.

2002: December 4; 2003: March 6.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

on appeal from the federal court of appeal

Income tax — Collection — Limitation of actions — Taxpayer failing to pay federal and provincial taxes for 1980 to 1985 taxation years as assessed by Revenue Canada in 1986 — Revenue Canada taking no collection action until 1998 — Whether federal and provincial limitation periods bar Revenue Canada from collecting taxpayer's federal and provincial tax debts — Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, s. 32 — Limitation Act, R.S.B.C. 1996, c. 266, ss. 1, 3(5).

Crown — Liability — Prescription and limitation — Collection of federal tax debt — Whether term "proceedings" in federal limitation provision encompasses collection procedures available under Income Tax Act — Whether cause of action arose "otherwise than in a province" — Whether Income Tax Act complete code excluding application of federal limitation period to collection procedures — Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, s. 32.

Limitation of actions — Collection of provincial tax debt — Definition of action — Whether phrase "self help remedy" in definition of "action" in provincial limitation legislation encompasses collection procedures available under provincial Income Tax Act — Limitation Act, R.S.B.C. 1996, c. 266, ss. 1, 3(5).

In 1986, the respondent, a resident of British Columbia, received a Notice of Assessment from the Minister of National Revenue that indicated a federal and provincial tax liability of $234,136 arising from a series of assessments and unpaid taxes in respect of his 1980 to 1985 taxation years. The respondent did not challenge this assessment, and paid nothing on the outstanding amount. From 1987 to 1998, Revenue Canada made no effort to collect the debt, and statements issued to the respondent during that period did not reflect the 1986 balance. In 1998, Revenue Canada sent a statement of account to the respondent that indicated a balance of $770,583, which included the amount owing as of 1986 and accrued interest. The respondent applied to the Federal Court, Trial Division, for judicial review of the 1998 claim, and sought a declaration that the Crown was prohibited from taking any steps to collect his tax debts for 1990 and prior years. The motions judge dismissed the application. The Federal Court of Appeal set aside that decision and held that the Crown was, pursuant to s. 32 of the *Crown Liability and Proceedings Act* ("*CLPA*") and s. 3(5) of the B.C. *Limitation Act*, statute-barred from collecting the respondent's federal and provincial tax debt.

Held: The appeal should be dismissed.

Per McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.: The six-year limitation period prescribed by s. 32 of the *CLPA* bars the Crown from collecting the

respondent's federal tax debt. First, as a law of general application, s. 32 presumptively applies on a residual basis to all Crown proceedings. The breadth of the provision's application can be narrowed only by an Act of Parliament that has "otherwise provided", either expressly or impliedly, for limitation periods. The *Income Tax Act* ("*ITA*") does not provide for limitation periods within its collection provisions, and the legislative silence with regard to prescription in these provisions, interpreted in conjunction with the express language used in the *ITA*'s assessment provisions, supports the finding that Parliament intended that limitation provisions of general application apply to the Minister's collection of tax debts. A purposive interpretation of the *ITA* confirms this conclusion. Furthermore, the certainty, evidentiary and diligence rationales for limitation periods do not offend the principles of horizontal and vertical equity that should in part govern the *ITA* and are directly applicable to the collection of tax debts. Second, the ordinary meaning of the phrase "proceedings...in respect of a cause of action" in s. 32 encompasses the statutory collection procedures of the Minister. It would be incongruous to find that s. 32 was intended to apply to the court action but not to the statutory collection procedures that serve the identical purpose. The rationales that support the application of limitation provisions to Crown proceedings apply equally to both the court and non-court proceedings at issue here. To exclude s. 32's application to proceedings that are equivalent in purpose and effect to a court action would frustrate the object and aim of the provision. The legislative history of s. 32 also supports the inference that Parliament intended its application to extend beyond proceedings in court. Third, on both a plain and purposive reading of s. 32, the cause of action in this case arose "otherwise than in a province". Tax debts created under the *ITA* arise pursuant to federal legislation and create rights and duties between the federal Crown and residents of Canada or those who have earned income within Canada. The debt may arise from income earned in a combination of provinces or in a foreign jurisdiction. The debt is owed to the federal Crown, which is not located in any particular province and does not assume a provincial locale in its assessment of taxes.

The Minister, in its role as agent of the province of British Columbia, is also barred by s. 3 (5) of the B.C. *Limitation Act* from collecting the respondent's provincial tax debt arising under the British Columbia *Income Tax Act* ("B.C. *ITA*"). Section 3(5) applies a limitation period of six years to actions for which prescription is not "specifically provided for" in another Act. Under s. 1 of the B.C. *Limitation Act*, an action is defined as including "any proceeding in a court and any exercise of a self help remedy". The term "self help remedy" encompasses the statutory collection procedures available under the B.C. *ITA*. A statutory collection procedure is a self help mechanism by which the Minister is able to effect a result that could otherwise be achieved only through an action in court. As well, the B.C. *ITA* does not specifically provide for limitation periods in its collection provisions. Since the province's collection rights are subject to expiry six years after the underlying cause of action arose, so too are the collection rights of the federal Crown as its agent.

Per Gonthier and Deschamps JJ.: The conclusion that the cause of action arises "otherwise than in a province" is inappropriate in two ways. First, it emphasizes the residence of the creditor instead of relying on the connecting factors of the cause of action. Second, it means that the federal government is not located anywhere in Canada. Common sense dictates that the federal Crown is located in every province. Since the federal government is, by virtue of its agreement with all of the provinces (except Quebec), responsible for collecting all provincial income taxes, it is sensible to bind its federal tax claim to the limits available on the provincial one. Efficiency is thus preserved by invoking one limitation for both the federal and provincial income tax debts arising in each province other than Quebec. Here, all of the connecting factors point to British Columbia. Consequently, the

British Columbia six-year limitation period should apply.

Cases Cited

By Major J.

Referred to: *Will-Kare Paving & Contracting Ltd. v. Canada*, [2000] 1 S.C.R. 915, 2000 SCC 36; *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804; *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536; *Friesen v. Canada*, [1995] 3 S.C.R. 103; *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6; *Symes v. Canada*, [1993] 4 S.C.R. 695; *Ross v. Canada*, [2002] 2 C.T.C. 222, 2002 FCT 401; *MacKinnon v. Canada*, [2002] 4 C.T.C. 48, 2002 FCT 824; *Royce v. MacDonald (Municipality)* (1909), 12 W.L.R. 347; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29; *Letang v. Cooper*, [1964] 2 All E.R. 929; *Domco Industries Ltd. v. Mannington Mills, Inc.* (1990), 29 C.P.R. (3d) 481; *Berardinelli v. Ontario Housing Corp.*, [1979] 1 S.C.R. 275; *E. H. Price Ltd. v. The Queen*, [1983] 2 F.C. 841.

By Deschamps J.

Referred to: *Williams v. Canada*, [1992] 1 S.C.R. 877.

Statutes and Regulations Cited

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, s. 32 [rep. & sub. 1990, c. 8, s. 31].

Federal Court Act, R.S.C. 1970, c. 10 (2nd Supp.), s. 38(2).

Federal Court Act, R.S.C. 1985, c. F-7, s. 39(3) [rep. 1990, c. 8, s. 10].

Income Tax Act, R.S.B.C. 1996, c. 215, ss. 1(7), 49, 69.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 152(4), 152(4.2), 159(3), 160(2), 160.1(3), 160.2(3), 160.3(2), 160.4(3), 222, 223(2), (3), (5) to (8), 224(1), 225(1), 225.1(1) to 225.1(4), 227(10.1).

Interpretation Act, R.S.B.C. 1996, c. 238, s. 14(1).

Limitation Act, R.S.B.C. 1996, c. 266, ss. 1 "action", 3(5), 9(1), (3).

Authors Cited

Black, Henry Campbell. *Black's Law Dictionary*, 6th ed. St. Paul, Minn.: West Publishing Co., 1990, "cause of action", "proceeding".

Bouscaren, C., R. Greenstein et A. Cordahi. *Les bases du droit anglais*. Paris: Ophrys, 1981.

Castel, Jean-Gabriel, and Janet Walker. *Canadian Conflict of Laws*, 5th ed. Toronto: Butterworths, 2002 (loose-leaf updated December 2002, Issue 3).

Cornu, Gérard. *Vocabulaire juridique*, 8e éd. Paris: Presses universitaires de France, 2000, "poursuite", "voie de droit".

Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983.

Hogg, Peter W., Joanne E. Magee and Ted Cook. *Principles of Canadian Income Tax Law*, 3rd ed. Scarborough, Ont.: Carswell, 1999.

Hogg, Peter W., and Patrick J. Monahan. *Liability of the Crown*, 3rd ed. Scarborough, Ont.:

Carswell, 2000.

Petit Larousse, 2003. Paris: Larousse, 2003, "poursuite".

Reid, Hubert. *Dictionnaire de droit québécois et canadien avec table des abréviations et lexique anglais-français*, 2e éd. Montréal: Wilson & Lafleur, 2001, "poursuite".

Reynolds, F. M. B. *Bowstead and Reynolds on Agency*, 16th ed. London: Sweet & Maxwell, 1996.

Sgayias, David, et al. *The Annotated Crown Liability and Proceedings Act 1995*. Scarborough, Ont.: Carswell, 1994.

APPEAL from a judgment of the Federal Court of Appeal, [2001] 3 F.C. 449, 199 D.L.R. (4th) 255, 270 N.R. 275, 2001 D.T.C. 5305, [2001] 3 C.T.C. 39, [2001] F.C.J. No. 696 (QL), 2001 FCA 144, reversing a judgment of the Trial Division, [1999] 3 F.C. 28, 163 F.T.R. 209, 172 D.L.R. (4th) 164, 99 D.T.C. 5136, [1999] 2 C.T.C. 104, [1999] F.C.J. No. 250 (QL). Appeal dismissed.

Graham R. Garton, Q.C., and *Carl Januszczak*, for the appellant.

Ian Worland, for the respondent.

Edwin G. Kroft, and *Geoffrey T. Loomer*, for the intervener.

The judgment of McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ. was delivered by

1 MAJOR J. — The issue in this appeal is narrow and easily stated: that is, whether federal and provincial limitation periods when exceeded apply to the Crown's ability to exercise its statutory

powers to collect tax debts. I have concluded that the limitation period prescribed by s. 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 ("*CLPA*"), bars the Crown from collecting the respondent's federal tax debt, and that s. 3(5) of the British Columbia *Limitation Act*, R.S.B.C. 1996, c. 266 ("B.C. *Limitation Act*") bars the Crown from collecting the respondent's provincial tax debt.

I. Factual Background

2 The respondent was a resident of British Columbia at all times relevant to this appeal. He received a Notice of Assessment from the Minister of National Revenue (the "Minister") dated June 17, 1986, that indicated a federal and provincial tax liability of $234,136.04 arising from a series of assessments and unpaid taxes in respect of his 1980 to 1985 taxation years. The respondent did not challenge this assessment, and paid nothing on the outstanding amount after 1986. In 1987, while of no consequence to this appeal, the indebtedness was internally written off by Revenue Canada, but was not extinguished or forgiven. From 1987 to 1998, Revenue Canada made no effort to collect the debt, and statements issued to the respondent during that period did not reflect the 1986 balance. However, on January 15, 1998, approximately 12 years after the Notice of Assessment, Revenue Canada, for the first time during this period, sent a statement of account to the respondent that indicated a balance of $770,583.42, which included the amount owing as of June 17, 1986, and accrued interest.

3 The respondent applied to the Trial Division of the Federal Court for judicial review of the January 15, 1998 claim, and sought a declaration that the Crown was prohibited from taking any steps to collect his tax debts for 1990 and prior years. The motions judge dismissed the application. The Federal Court of Appeal allowed the appeal from that decision, and held that the Crown was statute-barred from collecting the respondent's tax debt reflected in the 1986 Notice of Assessment. The Crown appeals from that decision.

II. Relevant Statutory Provisions

4 The following statutory provisions are relevant:

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

> **222.** All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

223. . . .

(2) An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.

(3) On production to the Federal Court, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection (1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

224. (1) Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

225. (1) Where a person has failed to pay an amount as required by this Act, the Minister may give 30 days notice to the person by registered mail addressed to the person's latest known address of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels be seized.

225.1 (1) Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount, [take any collection action] until after the day that is 90 days after the day of the mailing of the notice of assessment.

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

British Columbia *Limitation Act*, R.S.B.C. 1996, c. 266

1 . . .

"action" includes any proceeding in a court and any exercise of a self help remedy;

3 . . .

(5) Any other action not specifically provided for in this Act or any other Act may not be brought after the expiration of 6 years after the date on which the right to do so arose.

9 (1) On the expiration of a limitation period set by this Act for a cause of action to recover any debt, damages or other money, or for an accounting in respect of any matter, the right and title of the person formerly having the cause of action and of a person claiming through the person in respect of that matter is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.

. . .

(3) A cause of action, whenever arising, to recover costs on a judgment or to recover

> arrears of interest on principal money is extinguished by the expiration of the limitation period set by this Act for an action between the same parties on the judgment or to recover the principal money.

III. Judicial History

5 At the Federal Court, Trial Division ([1999] 3 F.C. 28), the motions judge held that s. 32 of the *CLPA* does not apply to the statutory collection procedures authorized by the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("*ITA*"). He found both that the collection procedures do not qualify under s. 32 as proceedings in respect of a cause of action, and that the *ITA* is a complete code in itself that excludes the application of s. 32. The motions judge also held that the B.C. *Limitation Act* does not apply to the Crown's collection of the provincial tax debt under the British Columbia *Income Tax Act*, R.S.B.C. 1996, c. 215 ("B.C. *ITA*"). As a result, his conclusion was that neither the Crown's collection of the federal nor the provincial tax debt was subject to the limitation periods.

6 The Federal Court of Appeal disagreed and allowed the appeal ([2001] 3 F.C. 449, 2001 FCA 144). Rothstein J.A. decided that the *ITA* is not a complete code that excludes the application of s. 32 of the *CLPA*, and that the statutory collection procedures qualify as proceedings in respect of a cause of action under s. 32. Consequently, the limitation period prescribed by s. 32 applies to the statutory collection procedures in the *ITA*. He held that the relevant limitation provision was s. 3(5) of the B.C. *Limitation Act*. Section 3(5) includes both court proceedings and self help remedies, and so applies to both court and statutory collection procedures under the *ITA*. Owing to this provision, the Minister was barred from collecting the federal tax debt six years after the right to do so arose. Rothstein J.A. also concluded that s. 3(5) bars the Crown, in its role as collection agent for British Columbia under the B.C. *ITA*, from pursuing the taxpayer's provincial debt.

IV. Issues

7 The appeal raises the following issues:

1. (a) Are statutory collection proceedings under the *ITA* subject to a limitation period pursuant to s. 32 of the *CLPA*? This requires the determination of:

   (i) Does the *ITA* provide for limitation periods for the collection of tax debts, or otherwise exclude the operation of s. 32 of the *CLPA*?

(ii) Is the exercise of a statutory collection power a "proceeding . . . in respect of any cause of action" under s. 32?

(b) If s. 32 is found to apply to the statutory collection proceedings, does the cause of action arise in a province or otherwise than in a province?

2. Does the B.C. *Limitation Act* apply to statutory collection proceedings undertaken by the Crown acting as collection agent for the Province of British Columbia pursuant to the B.C. *ITA*?

V. Analysis

A. *The Federal Tax Debt*

(1) Is the Federal Tax Debt Subject to Section 32 of the *CLPA*?

8 Prior to an analysis of the problem, it is useful to describe the broad collection powers available under the *ITA*. The Minister is authorized to collect tax debts by means of either a court action or statutory collection procedures. Section 222 of the *ITA* provides:

> All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

The various collection mechanisms enumerated in the *ITA* provide the Minister with an extensive range of remedies to recover debts. The Minister may certify an unpaid tax amount (s. 223(2)) and register the certificate in the Federal Court (s. 223(3)), at which point the certificate is deemed to be a judgment of that court. The Federal Court can then issue a certificate, notification, or writ evidencing the s. 223(2) certificate, which can be used by the Minister to create a charge, lien, priority, or other interest on property in any province (ss. 223(5) to 223(8)). Under the garnishment provision of s. 224(1), the Minister may require a third party who is indebted to the taxpayer to make payments directly to the Minister. The Minister may also order the seizure and sale of the taxpayer's goods and chattels under s.

225(1). These collection powers cannot be exercised until 90 days after the later of the mailing of a notice of assessment or the mailing of a confirmation or variation of the assessment, or until the taxpayer's appeal has been finally determined by the Tax Court of Canada (ss. 225.1(1) to 225.1(4)).

9 The outcome of this appeal narrows to whether the exercise of these collection powers is subject to prescription under s. 32 of the *CLPA*. Section 32 applies limitation periods to proceedings brought by or against the Crown in all cases unless Parliament has otherwise provided. The section states:

> Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose. [Emphasis added.]

The section applies to the statutory collection procedures if two criteria are met. First, the *ITA* must not otherwise provide for limitation periods with respect to the collection of tax debts. Second, the statutory collection procedures must qualify under s. 32 as "proceedings . . . in respect of a cause of action".

10 I agree with the reasons of the Federal Court of Appeal that each of the two criteria is met in this case, and that s. 32 must apply to the Crown's exercise of statutory collection powers.

(a) *Does the ITA Otherwise Provide for Prescription?*

11 As a law of general application, s. 32 of the *CLPA* presumptively applies on a residual basis to all Crown proceedings. The breadth of the provision's application can be narrowed only by an Act of Parliament that has "otherwise provided", either expressly or impliedly, for limitation periods. It is evident that the *ITA* does not provide for limitation periods within its collection provisions.

12 The noted author E. A. Driedger in *Construction of Statutes* (2nd ed. 1983), at p. 87, stated that the modern approach to statutory interpretation requires the words of an Act "to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". These principles have frequently been adopted by this Court both generally and in the construction of taxation legislation: see *Will-Kare Paving &*

Contracting Ltd. v. Canada, [2000] 1 S.C.R. 915, 2000 SCC 36, at para. 32; *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, both in the majority and minority concurring reasons, and *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578.

13 The assessment provisions of the *ITA* are clearly stated on prescription. By contrast, the collection provisions of the *ITA* are silent with respect to prescription. There is no reference in s. 222 or its accompanying provisions to either the absence or presence of a limitation period. Nonetheless, the appellant submits that the *ITA* has "otherwise provided" for prescription. In the appellant's submission, the *ITA* constitutes a complete statutory scheme for the collection of taxes, and so silence in the legislation indicates Parliament's intent to avoid fettering the Crown's collection powers with limitation periods.

14 There is no authority to support the proposition that the *ITA* is a complete code that cannot be informed by laws of general application. The *ITA* does not operate in a legislative vacuum: see *Will-Kare*, *supra*, at para. 31. See also P. W. Hogg, J. E. Magee and T. Cook, *Principles of Canadian Income Tax Law* (3rd ed. 1999), at p. 2, where the authors note that the "Income Tax Act relies implicitly on the general law". Accordingly, whether a statute or legal principle affects the operation of the *ITA* must be decided by an analysis of the specific provisions involved.

15 Absent legislation or judicial support, the appellant nonetheless requests the Court to interpret s. 222 of the *ITA* as if it permits the collection of tax debts "at any time". It is "a basic principle of statutory interpretation that the court should not accept an interpretation which requires the insertion of extra wording where there is another acceptable interpretation which does not require any additional wording": see *Friesen v. Canada*, [1995] 3 S.C.R. 103, at para. 27. This principle weighs against accepting the appellant's interpretation. The provision does not include the words "at any time", and is capable of a reasonable construction without that insertion. The legislative silence with regard to prescription gives rise to the logical inference that Parliament intended for limitation provisions of general application to apply to the Minister's collection powers.

16 This conclusion is supported by the explicit manner in which the *ITA* addresses limitation periods in its assessment provisions. The Court held in *Friesen*, *supra*, at para. 27, that "[r]eading extra words into a statutory definition is even less acceptable when the phrases which must be read in appear in several other definitions in the same statute". Numerous provisions in the *ITA* expressly stipulate that the Minister may make an assessment "at any time": see ss. 152(4), 152(4.2), 159(3), 160(2), 160.1(3), 160.2(3), 160.3(2), 160.4(3), and 227(10.1). Parliament has demonstrated a clear willingness to address the issue of limitation periods in the *ITA* where it sees fit to do so. As Rothstein J.A. noted at para. 22, "Parliament has put its mind to the limitation question in the *Income Tax Act* and when it intends there to be no limitation period, it has so stated." Accordingly, the unescapable conclusion is that the plain language used in the collection provisions does not support the inference that Parliament intended to exclude the application of limitation provisions to the Minister's collection powers.

17 In finding that the collection provisions implicitly exclude s. 32, the learned motions judge appeared to rely predominantly on s. 225.1 of the *ITA*, which prevents the Minister from initiating collection procedures pending objection or appeal of an assessment by the taxpayer. With respect, I do not agree that s. 225.1 lends any weight to the appellant's argument. The statutory stay prescribed by s. 225.1 is directed towards protecting the taxpayer from collection action pending a final determination of the validity of his or her assessment. Limitation periods, on the other hand, are meant to promote certainty, avoid stale evidence, encourage diligence, and bring repose: see *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 29, *per* La Forest J. The rationales outlined above for stays and limitation provisions are entirely distinct. I agree with Rothstein J.A.'s conclusion at para. 21:

> The enactment of a statutory stay which specifies when collection action may commence, cannot logically support the inference that Parliament considered that no limitation period should apply to that collection action.

18 A purposive analysis of the *ITA* confirms that the collection provisions do not by implication exclude the operation of s. 32. The application of limitation periods to the collection of tax debts does not offend the principles of horizontal and vertical equity that, as Iacobucci J. noted in *Symes v. Canada*, [1993] 4 S.C.R. 695, at p. 738, should in part govern the *ITA*. The appellant submits that applying laws of prescription to tax collection would unfairly alleviate the tax burden of individuals who experience fluctuations in income at the expense of those who enjoy a steady stream of income. This apparent problem can be averted, however, by the Minister's reasonably diligent exercise of debt collection. If a taxpayer does not have the ability to satisfy a tax debt prior to the expiration of the limitation period, the Minister can choose from a variety of means to extend the limitation period. In *Ross v. Canada*, [2002] 2 C.T.C. 222, 2002 FCT 401, the Federal Court, Trial Division, held that the registration of a certificate with the Federal Court in accordance with s. 223(3) of the *ITA* gives rise to a renewal of the limitation period. See also *MacKinnon v. Canada*, [2002] 4 C.T.C. 48, 2002 FCT 824, where the court found that the taxpayer's acknowledgement of indebtedness by way of a hypothecation agreement with the Minister, and his partial payment of the tax debt, each served to renew the limitation period. There is no need to exhaustively set out the ways in which the Minister can extend the limitation period, other than to note that there are numerous avenues open to the Minister by which renewals may be effected. There is no credible basis to support the submission that the laws of prescription will undermine the equitable collection of taxes when minimum diligence would have the opposite effect.

19 The appellant's submission that the rationales for limitation periods militate against their application to tax collection cannot be correct. As noted above, limitation provisions are based upon what have been described as the certainty, evidentiary, and diligence rationales: see *M. (K.)*, *supra*, at p. 29. The certainty rationale recognizes that, with the passage of time, an individual "should be secure in his reasonable expectation that he will not be held to account for ancient obligations": *M. (K.)*, *supra*, at p. 29. The evidentiary rationale recognizes the desire to preclude claims where the evidence used to support that claim has grown stale. The diligence rationale encourages claimants "to act diligently and

not 'sleep on their rights'": *M. (K.)*, *supra*, at p. 30.

20 Each of the rationales submitted as applicable to there being no limitation periods affecting collection are in fact just the opposite and are directly applicable to the Minister's collection of tax debts. If the Minister makes no effort to collect a tax debt for an extended period, at a certain point a taxpayer may reasonably come to expect that he or she will not be called to account for the liability, and may conduct his or her affairs in reliance on that expectation. As well, a limitation period encourages the Minister to act diligently in pursuing the collection of tax debts. In light of the significant effect that collection of tax debts has upon the financial security of Canadian citizens, it is contrary to the public interest for the department to sleep on its rights in enforcing collection. It is evident that the rationales which justify the existence of limitation periods apply to the collection of tax debts.

21 The legislative silence with regard to prescription in these provisions, interpreted in conjunction with the express language used in the *ITA*'s assessment provisions, supports the finding that Parliament intended that limitation provisions of general application apply to the Minister's collection of tax debts. A purposive interpretation of the statute confirms this conclusion. There was no evidence before the Court to lend any support to the submission that laws of prescription would frustrate the equitable collection of taxes. Finally, the rationales for limitation periods for the reasons given apply directly to the collection of tax debts.

22 As a result, whether s. 32 of the *CLPA* applies to the Minister's statutory collection procedures depends entirely upon whether such procedures qualify under s. 32 as "proceedings . . . in respect of a cause of action".

(b) *Do the Statutory Collection Procedures Qualify as "Proceedings . . . in Respect of a Cause of Action"?*

23 The application of s. 32 is limited to "proceedings by or against the Crown in respect of a cause of action".

24 Interpreted in their grammatical and ordinary sense, these words clearly encompass the statutory collection procedures in the *ITA*. Although the word "proceeding" is often used in the context of an action in court, its definition is more expansive. The Manitoba Court of Appeal stated in *Royce v. MacDonald (Municipality)* (1909), 12 W.L.R. 347, at p. 350, that the "word 'proceeding' has a very wide meaning, and includes steps or measures which are not in any way connected with actions or suits". In *Black's Law Dictionary* (6th ed. 1990), at p. 1204, the definition of "proceeding" includes,

inter alia, "an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right".

25 The statutory collection procedures closely resemble various proceedings in court. The registration of a certificate in Federal Court is deemed by s. 223(3) to be a judgment of that court. As Rothstein J.A. notes at para. 35:

> A requirement to pay under section 224 (as am. by S.C. 1994, c. 21, s. 101) is analogous to a garnishing order issued by a court. . . . Seizure and sale of chattels under subsection 225(1) is a provision closely parallel to a writ of execution issued by a court.

By granting the power to effect the collection of tax debts in this manner, Parliament has provided the Minister with an efficient and expeditious alternative to bringing a court action. However, the court and non-court collection procedures are identical in purpose. Both are mechanisms by which the Minister is able to enforce the collection of tax debts and thereby carry into effect the legal rights of the Crown. It is evident that both kinds of procedures are appropriately characterized as legal proceedings.

26 The appellant's submission turns on whether these proceedings are undertaken "in respect of a cause of action". The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. See *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, *per* Dickson J. (as he then was):

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

In the context of s. 32, the words "in respect of" require only that the relevant proceedings have some connection to a cause of action.

27 A "cause of action" is only a set of facts that provides the basis for an action in court: see *Letang v. Cooper*, [1964] 2 All E.R. 929 (C.A.), at p. 934; *Domco Industries Ltd. v. Mannington Mills, Inc.* (1990), 29 C.P.R. (3d) 481 (F.C.A.), *per* Iacobucci C.J. (as he then was), at p. 496; and *Black's Law Dictionary*, *supra*, at p. 221. In this case, s. 222 of the *ITA* provides that unpaid taxes constitute a debt recoverable by means of a court action, subject to the stay of collection action prescribed by s. 225.1.

As a result, as Rothstein J.A. notes at para. 37, the cause of action here involves "the existence of a tax debt and the expiry of the delay period entitling the Minister to take collection action".

28 In light of the above analysis, the ordinary meaning of the phrase "proceedings . . . in respect of a cause of action" encompasses the statutory collection procedures of the Minister. The exercise of the statutory proceedings is entirely dependent upon a set of facts that would support action by the Minister, i.e., the existence of a tax debt and the expiry of the delay period prescribed by s. 225.1.

29 I now turn to the French version of s. 32, which states:

> Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

30 The words "*poursuite*", "*procédure*" and "*instance*" are all used to render the term "proceedings" in different contexts. "*Procédure*" is even used to describe a cause of action, as demonstrated by the wording of s. 32 of the *CLPA*. This can also be verified in some French publications on the translation of English law (see for instance Bouscaren, Greenstein & Cordahi, *Les bases du droit anglais* (1981)). It is therefore difficult to consider the definition of a single expression to determine the common meaning of the English and French versions of s. 32. Indeed, the legislative history of s. 32, beginning with s. 38(2) (R.S.C. 1970, c. 10 (2nd Supp.)) and later s. 39(3) (R.S.C. 1985, c. F-7) of the *Federal Court Act* ("*FCA*"), which as discussed below were its precursors, also denotes both that context matters and that changes in terminology are not necessarily meant to bring about a change in the substantive law.

31 If we were to confine our analysis to the word "*poursuite*", we would find that generally, in Canada, that word excludes non-court proceedings: the term is defined in H. Reid, *Dictionnaire de droit québécois et canadien* (2nd ed. 2001), in the following way, at p. 425:

> [TRANSLATION]
>
> 1. Court action brought by a person in order to assert his right or obtain a sanction against

> the perpetrator of an offence. E.g.: A creditor's proceedings [*poursuite*] against his debtor.

But French dictionaries, which are also used in Canada, ascribe a broader definition to "*poursuite*". G. Cornu, in *Vocabulaire juridique* (8th ed. 2000), at p. 654, writes:

> [TRANSLATION] Exercise of a remedy [*voie de droit*] to compel someone to perform his obligations or submit to the orders of the law or of the public authority.

Cornu further defines "*voie de droit*" as follows (at p. 909):

> [TRANSLATION] Means given by the law to citizens to have their rights recognized and respected or to defend their interests; generic term encompassing court action, means (jurisdictional) of redress, executions, administrative recourses; by ext., any jurisdictional proceeding even initiated by the prosecution.

General dictionaries such as *Le Petit Larousse* (2003) define "*poursuite*" as a court proceeding, but also as [TRANSLATION] "[a]n action by the tax authorities to collect treasury debts".

32 It would therefore be difficult to conclude definitively that "*poursuite*" is more restrictive than "proceedings" and that this is determinative in the context of s. 32. It is then necessary, in this case, to conclude that the common meaning of the English and French versions of the provision is unclear and that resort to the other rules of statutory interpretation is necessary in order to discern Parliament's intent. Applying those rules, construing s. 32 in context, harmoniously with the purpose of the *CLPA*, I have concluded that it was meant to include administrative mechanisms that enable the Crown to achieve exactly the same result as it would through a formal action in court.

33 At common law, the Crown was not bound by limitation periods unless a federal statute expressly provided otherwise. On the other hand, the Crown was entitled to the benefit of a limitations defence in proceedings brought against it: see D. Sgayias et al., *The Annotated Crown Liability and Proceedings Act 1995* (1994), at pp. 135-36, and P. W. Hogg and P. J. Monahan, *Liability of the Crown* (3rd ed. 2000), at p. 71. The purpose of s. 32 is obviously, in the search for equity, to extend the same benefit of laws of prescription to subjects defending themselves against proceedings brought by the Crown.

34 A court action brought by the Minister to recover tax debt in this appeal would be subject to the limitation provisions in s. 32. It would be incongruous to find that s. 32 of the *CLPA* was intended to apply to the court action but not to the statutory collection procedures that serve the identical purpose. The certainty, evidentiary and diligence rationales that support the application of limitation provisions to Crown proceedings apply equally to both the court and non-court proceedings at issue here. See *Berardinelli v. Ontario Housing Corp.*, [1979] 1 S.C.R. 275, *per* Estey J., at p. 284:

> When one interpretation can be placed upon a statutory provision which would bring about a more workable and practical result, such an interpretation should be preferred if the words invoked by the Legislature can reasonably bear it . . . .

There is no reason to infer that Parliament intended for s. 32's application to turn solely upon the technicality of whether the relevant proceeding took place in court. To exclude s. 32's application to proceedings that are equivalent in purpose and effect to a court action would frustrate the object and aim of the provision.

35 The legislative history of s. 32 of the *CLPA* supports the inference that Parliament intended for its application to extend beyond proceedings in court. Section 38 of the *FCA* was enacted in 1971 (R.S.C. 1970, c. 10 (2nd Supp.)), and later renumbered as s. 39 of R.S.C. 1985, c. F-7. Section 38(2), which was succeeded by s. 39(3), applied limitation provisions to proceedings brought by or against the Crown. Section 39 of the *FCA* stated:

> **39.** (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in any province between subject and subject apply to any proceedings in the Court in respect of any cause of action arising in that province.
>
> (2) A proceeding in the Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.
>
> (3) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions referred to in subsections (1) and (2) apply to any proceedings brought by or against the Crown.

Prior to 1992, s. 32 of the *CLPA* (then entitled the *Crown Liability Act*), applied only to tort actions against the Crown. By S.C. 1990, c. 8, ss. 10, and 31, s. 39(3) of the *FCA* was repealed and s. 32 of the

CLPA was amended to apply to all proceedings in respect of a cause of action brought both by and against the Crown.

36 It is readily apparent, as the Federal Court of Appeal notes at para. 49, that s. 38(2) and later s. 39(3) were the predecessors to the current s. 32 of the *CLPA*. In determining the legislative intent behind the current wording in s. 32, it is useful to examine the judicial interpretation given to the provisions that came before it. In *E. H. Price Ltd. v. The Queen*, [1983] 2 F.C. 841, the Federal Court of Appeal considered whether s. 38(2) of the *FCA* applied to the Minister's registration of a certificate under the *Excise Tax Act*. In *obiter*, Clement D.J. held at pp. 847-48 that in the absence of the limiting words "in the Court" that were contained in s. 38(1), "proceedings" under s. 38(2) were not limited to court proceedings and included the Minister's registration of a certificate. In its subsequent amendment of s. 32 of the *CLPA*, Parliament did not include the words "in the court" or words of a similar limiting effect. As Rothstein J.A. found at para. 50, "it is a fair inference that Parliament, not having done so, meant to adopt the interpretation in *E. H. Price* so that 'proceedings' in section 32 include all legal processes in respect of a cause of action, whether court or otherwise". Although the words "in respect of a cause of action" were not included in s. 39(3), for the reasons I have outlined, the inclusion of these words in s. 32 does not have the effect of limiting the provision's application to proceedings in court.

37 I conclude that the English version best reflects the intent of the legislator. As a result, it should be determined which particular limitation period provided by s. 32 applies to these proceedings. This depends upon whether the cause of action on the federal tax debt arose in a province or otherwise than in a province.

(2) Does the Cause of Action Arise in a Province, or Otherwise than in a Province?

38 Section 32 applies provincial limitation laws to proceedings in respect of a cause of action arising in a province, and a six-year limitation period to those which arise otherwise than in a province. The motions judge, at para. 59, would have found that the cause of action arose otherwise than in a province. The Court of Appeal applied the provincial limitation provision and so, implicitly at least, found that the cause of action arose in a province. In this appeal, the matter is of no particular consequence, because in either case the limitation period runs for six years from the date upon which the cause of action arose. Nonetheless, I conclude that the appellant's cause of action arose otherwise than in a province, and hence that the six-year limitation period provided by s. 32 applies.

39 Tax debts created under the *ITA* arise pursuant to federal legislation and create rights and duties between the federal Crown and residents of Canada or those who have earned income within Canada. The debt may arise from income earned in a combination of provinces or in a foreign jurisdiction. The debt is owed to the federal Crown, which is not located in any particular province and

does not assume a provincial locale in its assessment of taxes. Consequently, on a plain reading of s. 32, the cause of action in this case arose "otherwise than in a province".

40 A purposive reading of s. 32 supports this finding. If the cause of action were found to arise in a province, the limitation period applicable to the federal Crown's collection of tax debts could vary considerably depending upon the province in which the income was earned and its limitation periods. In addition to the administrative difficulties that potentially arise from having to determine the specific portions of tax debts that arise in different provinces, the differential application of limitation periods to Canadian taxpayers could impair the equitable collection of taxes. Disparities amongst provincial limitation periods could foreseeably lead to more stringent tax collection in some provinces and more lenient collection in others. The Court can only presume that in providing for a limitation period of six years to apply to proceedings in respect of a cause of action arising otherwise than in a province, Parliament intended for limitation provisions to apply uniformly throughout the country with regard to proceedings of the kind at issue in this appeal.

41 I conclude that the collection proceedings under the *ITA* are subject to prescription six years after the cause of action arose. As noted above, the cause of action in this case comprised the respondent's tax debt and the expiry of the 90-day delay period after the mailing of the Notice of Assessment dated June 17, 1986. As a result, the cause of action arose on September 16, 1986. The Minister undertook no action in the six years after that date to effect a renewal of the limitation period. Consequently, as of September 16, 1992, s. 32 of the *CLPA* barred the Minister from collecting the respondent's 1986 federal tax debt. Limitation periods have traditionally been understood to bar a creditor's remedy but not his or her right to the underlying debt. In my view, this is a distinction without a difference. For all intents and purposes, the respondent's federal tax debt is extinguished.

B. *The Provincial Tax Debt*

42 The final issue is whether the Minister, in his or her role as agent of the province of British Columbia, is barred by the B.C. *Limitation Act* from collecting tax debts arising under the B.C. *ITA*.

43 Section 49 of the B.C. *ITA* provides that s. 222 of the *ITA* applies for the purposes of the B.C. *ITA*, subject, as *per* s. 1(7), to such modifications as the circumstances require to make it applicable to British Columbia. Accordingly, tax debts arising under the B.C. *ITA* are debts owed to the province.

44 Section 69 of the B.C. *ITA* authorizes British Columbia's Minister of Finance and Corporate Relations to enter into a collection agreement whereby the federal government agrees to collect taxes payable under the B.C. *ITA* and remit those taxes to the provincial government. A

collection agreement of this kind between British Columbia and the Government of Canada has been in place since 1962: Memorandum of Agreement, January 28, 1962. Subsection 1(1) of this agreement states as follows:

> Canada, as agent of the Province, will collect for and on behalf of the Province the income taxes imposed under the [B.C. *ITA*] . . . . [Emphasis added.]

45 As a result, the provincial government, as principal, has delegated its right to collect tax debts to the federal government, its agent. It has long been accepted that the authority, express or implied, of every agent is confined within the limits of the powers of his or her principal: see F. M. B. Reynolds, *Bowstead and Reynolds on Agency* (16th ed. 1996), at p. 110. Accordingly, in order to determine the collection rights that are delegated to the federal government, it is necessary to determine the collection rights of the province.

46 The B.C. *Limitation Act* governs the law on limitations of actions within British Columbia. Section 14(1) of the British Columbia *Interpretation Act*, R.S.B.C. 1996, c. 238, states that unless an enactment specifically provides otherwise it is binding on the Government of British Columbia. The B.C. *Limitation Act* does not provide otherwise, and so its provisions apply to proceedings brought by and against the provincial government.

47 Section 3(5) of the B.C. *Limitation Act* applies a limitation period of six years to actions for which prescription is not "specifically provided for" in another Act. Under s. 1 of the B.C. *Limitation Act*, an action is defined as including "any proceeding in a court and any exercise of a self help remedy". I agree with both the motions judge and the Court of Appeal that the term "self help remedy" encompasses the statutory collection procedures available under the B.C. *ITA*. A statutory collection procedure is a self help mechanism by which the Minister is able to effect a result that could otherwise be achieved only through an action in court. As well, the B.C. *ITA* does not specifically provide for limitation periods in its collection provisions.

48 Consequently, the province's right to pursue collection proceedings under the B.C. *ITA* is subject to the limitation period set out in s. 3(5) of the B.C. *Limitation Act*. Moreover, pursuant to s. 9 (1) of the B.C. *Limitation Act*, on the expiration of the limitation period, the province's right and title to the tax debt is extinguished, and pursuant to s. 9(3), the province's right and title to interest on the tax debt is extinguished.

49 As noted above, the federal Crown's right to collect provincial taxes in this case is no

greater than the right delegated to it by the province. Since the province's collection rights are subject to expiry six years after the underlying cause of action arose, so too are the collection rights of the federal Crown as its agent.

50 The cause of action here consisted of the tax debt and the expiry of the delay period allowing collection action to be taken on September 16, 1986. The Minister undertook no action in the six years after that date to effect a renewal of the limitation period. Consequently, as of September 16, 1992, the federal Crown became statute-barred from collecting the provincial tax debt. As well, the right and title of any claimant to the respondent's provincial tax debt, and its accrued interest, were extinguished on that date.

VI. Conclusion

51 For the foregoing reasons, I would dismiss the appeal with costs.

The reasons of Gonthier and Deschamps JJ. were delivered by

52 DESCHAMPS J. — I agree with the reasons of my colleague, Justice Major, except on one point.

53 In determining where the cause of action arises under s. 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, Major J. focusses on the location of the federal government. The conclusion that the cause of action arises "otherwise than in a province" is, in my view, inappropriate in two ways. First, it emphasizes the residence of the creditor instead of relying on the connecting factors of the cause of action and second, it means that the federal government is not located anywhere in Canada or, as the French version of s. 32 reads, the federal government would be located "*ailleurs que dans une province*". Common sense, rather, would dictate that the federal Crown is located in every province and not "otherwise than in a province".

54 The cause of action concept is more readily understood in negligence cases. Here, however, the claim has a statutory foundation. It may be characterized as a right *in personam*, i.e. the right of the Crown against the taxpayer. This Court, in *Williams v. Canada*, [1992] 1 S.C.R. 877, dealt with a similar problem in a case concerned with a tax exemption. Although the residence criterion was modified in favour of a test encompassing all connecting factors, the *situs* analysis was upheld to determine the location of the debt. This concept is also used in private international law in order to

determine where enforcement of a claim can be pursued: J.-G. Castel and J. Walker, *Canadian Conflict of Laws* (5th ed. (loose-leaf)), at para. 22.2.

55 Applying the connecting factors test used in *Williams*, the factors would be the respondent's residence, his place of employment and the place where his income was received. All of these factors point to British Columbia. The British Columbia six-year limitation period should apply.

56 Since the federal government is, by virtue of its agreement with all of the provinces (except Quebec), responsible for collecting all provincial income taxes, it is sensible to bind its federal tax claim to the limits available on the provincial one. Efficiency is thus preserved by invoking one limitation for both the federal and provincial income tax debts arising in each province, other than Quebec.

Appeal dismissed with costs.

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